

MOSES NOBLE.

[To accompany Bill H. R. C. C. No. 12.]

MARCH 2, 1860.

Mr. HOARD, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the bill No. 12 from the Court of Claims, "for the relief of Moses Noble," having had the same under consideration, beg leave to report :

That the claim was favorably reported on by the Committee on Claims of the 35th Congress ; and your committee, having examined the whole case, concur fully with said report, which they accordingly adopt, and recommend the passage of the accompanying bill.

Mr. S. S. MARSHALL, from the Committee on Claims, submitted the following report :

The Committee on Claims, to whom was referred the bill from the Court of Claims No. 12, "for the relief of Moses Noble," have had the same under consideration, and beg leave to report :

This is a claim for fishing bounties, under the act of June 19, 1813. In the spring of 1852, the claimant, as the agent and manager of certain fishing vessels, engaged masters, or skippers, for the fishing season, and caused each of the said masters to make an agreement with every fisherman employed in each of the said vessels in accordance with the act of Congress. Under the law, the owners of the said vessels became entitled to be paid by the collector of the district of Portsmouth, New Hampshire, out of any money of the United States appropriated for such purposes, the sum of \$1,704 68. The payment, however, was refused by the collector, on the ground that no log-book of the voyage was furnished him, but the Secretary of the Treasury, to whom an appeal had been taken, refused the allowance on account of a slight informality in the instrument of agreement with the fishermen.

The Court of Claims have decided that the agreement with the fishermen was a substantial compliance with the act of Congress of June 19, 1813, and reported the bill for the relief of the claimant. Your committee fully concur with the Court of Claims in this view, and accordingly report back the bill without amendment, and recommend its passage. The committee would add, there is no question as to the entire legality of the contract made with the fishermen. The informality was an omission in reducing the contract to writing. This omission the Court of Claims held to be immaterial, in which opinion your committee concur.

The COURT of CLAIMS submitted the following report :

MOSES NOBLE *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The Court of Claims respectfully presents the following documents as the report in the case of Moses Noble *vs.* the United States :

1. The petition of the claimant.
2. Depositions and other evidence exhibited in the case, and transmitted to the Senate.
3. Claimant's brief.
4. Solicitor's brief.
5. Opinion of the court, delivered by C. J. Gilchrist.
6. Bill for the relief of Moses Noble.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 25th day of June,
[L. S.] A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the United States Court of Claims :

Moses Noble, of Portsmouth, in the State of New Hampshire, respectfully represents, that in the spring of 1852 he was agent for and had the management of the following named and described fishing vessels belonging to the district of Portsmouth, to wit:

Name of vessels.	Tonnage.	Owned by—	Commence- ment of voyage.	Terminat'n of voyage.
			1852.	1852.
Brig Good Hope -----	105 ⁷ / ₉₅	William Tarlton-----	May 25	Oct. 20
Schooner Delta -----	67 ⁸ / ₉₅	Jeremiah Noble -----	17	Nov. 10
Schooner Jasper -----	54 ² / ₉₅	James N. Tarlton, Jeremiah Noble-----	25	Oct. 12
Schooner Sardine-----	48 ⁶ / ₉₅	James N. Tarlton, Jeremiah Noble-----	17	Nov. 10
Schooner Five Sisters ----	47 ¹ / ₅	James N. Tarlton, Jeremiah Noble-----	20	10
Schooner Commonwealth..	72 ⁵ / ₉₅	John Yeaton, John Trefethen, and Jeremiah Noble-----	April 5	10
Schooner Two Brothers--	45 ⁴ / ₉₅	James N. Tarlton, Jeremiah Noble-----	June 21	10

That, in the fulfilment of his duty as the agent and manager of said fishing vessels, and in accordance with the orders of the owners

of said vessels, he, early in the said spring of 1852, and before the commencement of the fishing season of that year, engaged masters or skippers for each of said fishing vessels, for the then current fishing season, to engage in carrying on the bank and other codfisheries; and he caused the master or skipper of each of said fishing vessels, before proceeding on said fishing voyage, to make an agreement with every fisherman employed in each of said fishing vessels, in accordance with the provisions of the first section of "An act for the government of persons in certain fisheries," approved June 19, 1813, and to conform in all particulars with the requirements of said act; and that he then, as agent of the owners, signed an instrument which was supposed to contain said agreement, and that said vessels all engaged for more than four months, (excepting the brig Good Hope, which so engaged for three months and one-half a month, with a crew of ten men,) during the fishing season of 1852, in the bank and other codfisheries, and in all respects conformed to the requirements of the act above named, and with the requirements of the act entitled "An act laying a duty on imported salt, granting bounty on pickled fish exported, and allowance to certain vessels employed in the fisheries," approved July 19, 1813. By reason of said several acts of Congress, and in conformity with the requirements thereof, the owners, masters, and crews of said several fishing vessels became entitled to be paid by the collector of the district of Portsmouth, out of the money of the United States appropriated for such purposes, the following sums, that is to say:

To the owners, master, and crew of brig Good Hope.....	\$360 00
Do.....do.....schooner Sardine.....	194 61
Do.....do.....do.....Delta	271 71
Do.....do.....do.....Two Brothers....	181 94
Do.....do.....do.....Five Sisters.....	188 59
To the owners, master, and crew of schr. Commonwealth..	290 27
Do.....do.....do.....Jasper.....	217 56
	<hr/>
	1,704 68
	<hr/>

But when this petitioner applied, on the 31st day of December, A. D. 1852, to the collector of the district of Portsmouth for the payment of the bounty above specified, said collector refused to pay the same, upon the ground that no log-book of the voyage was furnished to him. This petitioner then applied to the Secretary of the Treasury for redress, who declined to order the bounty to be paid, not because the log-book was not furnished, but because the words "by us" and the words "to be divided among us" were omitted, not in the "agreement" actually made with the fishermen before named, but accidentally omitted in the *instrument* actually signed, and intended to include said agreement.

In order that the court may the more clearly see the grounds upon which the Treasury Department decided that it had no authority, without an act of Congress, to order the payment of bounty to which the

owners, masters, and crews of said vessels would have otherwise been entitled, the petitioner here inserts a copy of the blank instrument used in reducing said "agreement," made with the crew and fishermen of each fishing vessel, to writing, inserting within brackets the words for the clerical error of omitting which the payment was withheld.

FISHING ARTICLES.

United States of America, District of Portsmouth, A. D. 184 .

It is agreed between the owners or charterers, master or skipper, and seamen of the schooner , whereof is at present master or skipper, now lying in the port of , and to be employed on a fishing voyage or voyages, to commence on the and to end on the 184 , unless said vessel should be previously hauled up by the mutual agreement of the parties to this agreement. That in consideration of one-half of the number of fish and oil, or proceeds of said voyage or voyages after the shoreman's share is deducted, [*to be divided among us,*] in proportion to the quantity or number of fish respectively caught [*by us*] and oil made, we, the said master or skipper and undersigned fishermen, do agree to, and will perform, the aforesaid intended fishing voyage or voyages.

The said fishermen do hereby promise to obey all the lawful commands of the master or skipper on board said schooner and faithfully to do and perform the duty of fishermen as required by the master or skipper through the whole of the aforesaid term or fishing season, and upon no account to go on shore, nor to be absent from duty, without liberty being first obtained from the master or skipper so to do; and twenty-four hours' absence, without such liberty, shall be deemed a total desertion.

In case of disobedience of orders, neglect of duty, desertion, or any other unlawful act, the fisherman or fishermen so offending shall forfeit his or their share or shares of fish and oil, or proceeds of said voyage or voyages, and to pay whatever damages may accrue to the owner or charterer of said schooner in consequence of the offence committed. Said damages to be assessed by referees to be chosen by the parties from the shoremen in the river.

Time of entry.	Men's names.	Station.	Time of engagement.	Time of sailing and arriving.

And this petitioner further represents that said several agreements with the fishermen were in good faith, and intended to be, and actually were in exact conformity with said several acts of Congress before

named. And all the voyages of said several fishing vessels, for the fishing season of 1852, were agreed by and between all parties then to be begun, carried on, ended, settled for, and the proceeds divided in exact conformity with said several acts of Congress, and said voyages of said several vessels were managed and settled and the proceeds divided accordingly. But when said parties reduced their said agreement to writing, they made use of a blank form, which, several years before, had been prescribed by the then collector of the district of Portsmouth, which form for several years previous, and to the year 1852, was in general use in the district, and upon which fishing bounties for several years were paid without objection.

And this petitioner further represents, that neither he nor any other person interested in the voyages of said fishing vessels for the fishing season of 1852 had any knowledge or suspicion that the blanks prescribed by the collector, and so long in use, and used by the masters or skippers in reducing said agreements to writing, as aforesaid, were in any way defective, until notified thereof by the Treasury Department, and after the several voyages of said fishing vessels for the fishing season of 1852 had been settled and the proceeds divided precisely according to the requirements of said several acts of Congress, and in the belief that said agreement so required them to settle and divide the proceeds of said vessels.

The Secretary of the Treasury would not authorize the payment of said claim for \$1,704 68, because the instrument in writing did not show that the "*agreement*" was in accordance with the requirements of said several acts of Congress, and because he could not receive any evidence of what the "*agreement*" actually was, except the instrument signed by the parties.

Because said several acts of Congress were intended by all the parties to be obeyed, and have been obeyed; because said clerical error has been entirely unknown and inoperative between the parties in interest, the object of the law has been accomplished, and, as this petitioner conceives, the rights of the parties which he represents established. He claims that a clerical error that was inoperative in defeating the object of the law, ought to be equally inoperative in obstructing the claim of these parties.

Wherefore this petitioner prays you to make such orders as will enable him to receive one thousand seven hundred and four dollars and sixty-eight cents, for the account aforesaid, for the benefit of whom it may concern.

MOSES NOBLE,
Agent for the Owners.
W. H. Y. HACKETT,
Solicitor for the Petitioner.

UNITED STATES, *New Hampshire*, ss :

PORTSMOUTH, *June —, 1855.*

Then said Moses Noble made solemn oath that the facts stated in the foregoing petition are true.

Before me,

W. H. Y. HACKETT,
Com'r U. S. Circuit Court, District New Hampshire.

PORTSMOUTH, *June* —, 1855.

Moses Noble, who signed the foregoing petition, is duly and fully authorized to prosecute the claim therein described.

JAMES N. TARLTON,
JEREMIAH NOBLE,
JOHN YEATON,
WILLIAM TARLTON,
JEREMIAH NOBLE,
For John Trefethen's share.

IN THE COURT OF CLAIMS.—No. 38.

On the petition of Moses Noble.

The United States do not deny the facts set forth in the petition ; but they deny that the petitioners, upon their own showing, are entitled to relief.

1. I claim, if the petitioners in good faith have attempted to conform, and have substantially conformed to the provisions of the acts of Congress referred to, that the claim is established. That the acts of Congress, *quo ad hoc*, amount to a contract on the part of the United States with the petitioners, and that they have fulfilled their part of it.

The requirement that the "agreement" should be "in writing or print," was introduced to protect the rights of the fishermen, and to secure a fair division of the proceeds of the fishing voyages. The government, beyond its functions of protecting the citizens, had no interest in the mode or proportions in which the fish or oil might be divided. If the fish and oil were divided as the law required, and as it was supposed the agreement provided, the object of the law is accomplished and the rights of the petitioners established, even if there were a lack of precision in the terms of the agreement, or even if there were a mistake in its form.

2. My next position is, that the form of the agreement actually used is in substance in accordance with the requirements of the statutes. The language of the law is, "and shall also express that the fish, or the proceeds of such fishing voyage or voyages which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught."—(1st sect. act June 19, 1813.)

Now, I contend that the above requirement was intended to be complied with by the "agreement" made. It does not admit of any other interpretation than that the fish belonging to the skipper and crew were to be "divided *among them*, in proportion to the quantities or number of said fish which they may respectively have caught."

It is indisputable that the "agreement" provides that one-half of the fish and oil were to be "divided" among those who caught the fish. How can any court give effect to the language of the other clause of the "agreement," "in proportion to the quantity or number

of fish respectively caught," without adopting the rule of division required by the before-named act.

The crews could have maintained an action against the owners upon the "agreement," and upon the interpretation which I contend for. A court of admiralty would have decreed a division of the proceeds of the voyages in accordance with the same interpretation.

3. But if this "agreement" will bear an interpretation at variance with the requirements of the law, it is certain that all the parties to it interpreted it and settled by it as if it were in exact accordance with the acts of Congress, and with what they supposed the "agreement" required.

4. Can the government rightfully withhold from these fishermen their share of the bounty, upon the ground that the owners of the vessels in which they served omitted by mistake a requirement intended for the protection of these same fisherman, the omission of which was not discovered by any one until the protection intended had been fully enjoyed? After the "agreement" had effected the object of the law in protecting the fishermen, can the government omit to fulfil its own contract, upon the ground that though the "agreement" was fulfilled, it was defectively drawn?

5. Courts will hold this "agreement" to be in law what the parties in fact intended it to be, and a court of equity would reform the errors.

6. The form or blank used by the petitioners in reducing their "agreement" to writing, was prescribed by the collector of the revenue for this district, and had previously been in use and bounties paid upon it for years. I of course do not claim that this fact binds the government, but, in the equitable view of this claim which this court will take, they will regard it as an indication that the petitioners intended to be right; and, if they were wrong, they were misled by an officer of the government whom they felt bound to follow, especially in this matter, and their error was in form, not in substance.

7. If this were a proceeding between two citizens, what answer can be made that would prevail either in a court of law or equity? Will the government, in its own case, withhold what it would compel an individual to pay?

W. H. Y. HACKETT,
Solicitor for Petitioners.

IN THE COURT OF CLAIMS.—No. 38.

On the petition of Moses Noble.—Brief of the U. S. Solicitor.

This is a claim for \$1,704 68, for fishing bounties to the crews of certain vessels for the season of 1852, which were disallowed by the collector of the district of Portsmouth, New Hampshire, on the ground that no log-book of the voyage was furnished to him. When presented to the Secretary of the Treasury, on appeal from the decision of the collector, it is alleged in the petition that the Secretary "de-

clined to order the bounty to be paid, not because the log-book was not furnished, but because the words '*by us*' and the words '*to be divided among us*,' were omitted, not in the agreement actually made with the fishermen before named, but accidentally omitted in the instrument actually signed and intended to include said agreement."

The petition is framed upon the idea that claimant shows himself entitled to the bounties in question, if the objection made by the Secretary of the Treasury be invalid, without showing that he complied with the law on any other point save that drawn in question. He does not, in a word, attempt to set forth how he complied with the law and the regulations issued to carry it into effect, on any other but the disputed point.

It appears by the petition, that the collector excepted to one part of his case, and the Secretary of the Treasury to another part of it; and it might be, if he fully presented it to this court, that other objections might be made. I insist, therefore, that he shall state how he complied with the acts of Congress regulating the subject of the payment of fishing bounties.

Among other particulars, besides the tonnage and names of the vessels, and names of their owners, and the agreement made with the fishermen, and the year and season in which the voyages were made, &c., it ought to be stated when—that is, between what dates—the vessels were engaged; that they were engaged exclusively in taking codfish at sea; that the master and three-fourths of the crew were citizens of the United States; that the vessels were inspected by the proper officer of the customs, (naming him,) and that he certified to the sufficiency of her outfit according to law; that a regular log-book was kept, containing entries made from day to day; that said log-book was duly presented to the collector; that the owners or agents of the vessels presented also the certificate required of them.

Without such a statement of the case, the court cannot know that the claimant is entitled, although it may not occur in the objections taken by the officers who have passed on the case. If a statement of the other essential facts which go to form a compliance with the laws be not necessary, it was not necessary to state the fact that the agreement in question was made, or to state anything more than that the owners of certain vessels which were engaged in the codfisheries in the year 1852 complied with the laws, so as to entitle them to the bounties claimed. This would not be deemed sufficient, I imagine; but I do not see that the statement of only one fact out of a number equally essential to showing a compliance with the law, will better enable the court to decide upon the claim, than if none of the facts had been stated.

I do not insist upon the necessity of such a statement, however, because I have any doubt of the sufficiency of the objections which appear by the petition to have been made to the claim.

And, first, with respect to the objection made by the collector that no log-book was produced and proved, as required by him, when the claim was presented to him. This evidence was prescribed by the regulations of the Treasury Department, in force at the time the bounties were claimed, and for many years previously, and it has been

found a necessary piece of testimony to guard the treasury from fraudulent claims. The legality of this particular requirement was recognized by Judge Story in the case of the schooner *Harrriet*, forfeited for the false statement made by the agent of the owner to obtain the fishing bounty.—(See 1 Story's Rep., 251.)

The general authority of the Secretary of the Treasury to establish regulations proper to carry out the duties devolved upon him by acts of Congress, is considered in the case of the *United States vs. Bailey*, 9 Peters, 253. The question arose on an indictment for false swearing, in an affidavit prescribed by regulations of the treasury, made to carry out the law of 1832, entitled "An act for liquidating and paying certain claims of the State of Virginia." The court say: "It is the duty of the Secretary to adjust and settle these claims, and in order to do so he must have authority to require suitable vouchers and evidence of the facts which are to establish the claims."

It follows that the Secretary had authority to establish such regulations as he deemed proper and necessary to enable him to carry the law into effect. He thought the affidavit a proper and necessary voucher and part of the evidence, and the Supreme Court held that Bailey could be indicted for making it falsely, although the law did not expressly authorize or require this species of evidence.

The regulation by which the log-book is made a necessary part of the evidence to obtain the fishing bounty, depends on the same principle. The Treasury Department is required to pay the bounties under certain circumstances. To ascertain the existence of these circumstances or facts, it prescribes what proof shall be made to its officers, and, among other things, to prove the time during which the vessel has been *at sea*, and the number of fish caught by the respective fishermen—both points of prime importance for the purposes of this law; it requires that a journal or log-book shall be kept, in which these things shall be noted daily. This is plainly requisite to any fair execution of the law, and a failure to comply with the regulation is a defect of proof which cannot be supplied.

2. As to the agreement.

The law (1st section of act of 19th June, 1813, 3 Stat., p. 2) requires that the master or skipper of every vessel engaged in the codfisheries "shall, before proceeding on such fishing voyages, make an agreement *in writing or print*, with every fisherman who may be employed therein, (except only an apprentice or servant of himself or owner) and, in addition to such terms of shipment as shall be agreed on, *shall express whether the same is to continue for one voyage or for the fishing season*; and shall also express, that the fish or the proceeds of such fishing voyage or voyages, which may appertain to the fishermen, *shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught.*"

The agreement set out in the petition neither expresses whether it is to continue for the voyage or the season, nor does it express that so much of the fruits of the voyage as shall belong to the fishermen shall be divided among them in proportion to the number or quantities of fish taken by each fisherman.

The first omission is not noted in the argument of the counsel. His

argument, however, with respect to the last, is applicable to both; that is, that the agreement was properly understood by the skipper and his men, and acted upon as if expressed. That it was not a matter of interest to any but themselves, and as they have arranged it satisfactorily among themselves, the government, which is concerned only in the protection of individuals, should pay accordingly.

It seems to be forgotten that the arrangement in question relates not to money to which these individuals have any meritorious claim, but is a mere bounty of the government, to be paid only according to statutory enactment, in furtherance of a policy which depends for its success on a strict adherence to the terms of the law.

The design in requiring these agreements to be *express* and in *writing*, both as to the *voyage* or *season* for which the shipment was made, and the *terms on which the proceeds are to be divided*, was to define and fix the rights of the parties clearly beforehand, and at the same time to enable the government to supervise their proceedings, and secure the execution of the design for which it pays—of encouraging these enterprises, and particularly in stimulating individual skill and industry, in a pursuit which is found to be the best naval school.

If these laws, and the regulations to enforce them, were required to be observed absolutely by all engaged in fishing, they might be regarded as vexatious, and those called on to enforce them might be pardoned for a disposition to relax their strictness. But, as it is not compulsory upon any one to observe these provisions, and they apply only when the bounty for their observance is claimed, it is the duty of the officers charged with the payment to see that they have been strictly observed; and this court and Congress ought to be chary in destroying any of the safeguards which have been found from experience to be necessary to protect the treasury.

M. BLAIR.

MOSES NOBLE *vs.* THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the court.

This is a claim for fishing bounties, amounting to the sum of \$1,704 08 upon seven vessels employed in the fisheries in the year 1852.

The petition states the names, the owners, and the tonnage of the vessels, and the date of the commencement and termination of the voyage of each of them; that the claimant, who was the agent and manager of the vessels, before the commencement of the fishing season, of 1852, engaged masters for each of the vessels for the fishing season, for the purpose of carrying on the bank and other codfisheries; and caused the masters before proceeding on the voyage, to make an agreement with every fisherman in accordance with the provisions of the first section of "An act for the government of persons in certain fisheries," approved June 19, 1813, (3 Stat., 2,) and to conform in all particulars with the requirements of said act; and that he then, as the agent of the owners, signed an instrument which was supposed to contain said agreement, and that the vessels all engaged for more

than four months, excepting the brig Good Hope, which engaged for three and a half months, in the bank and other codfisheries; and in all respects conformed to the requirements of the act above named, and with the requirements of the act laying a duty on imported salt, granting a bounty on pickled fish exported, and an allowance to certain vessels employed in the fisheries approved July 29, 1813, (3 Stat., 49.)

The first section of the act of June 19, 1813, enacts that the master of any vessel to be employed in the bank and other codfisheries shall, before proceeding on such fishing voyage, make an agreement in writing or print with every fisherman who may be employed therein, and shall, in such agreement, express whether the same is to continue for one voyage or for the fishing season; and shall also express that the fish, or the proceeds of such fishing voyage which may appertain to such fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught.

The 8th section of the act of July 29, 1813, (3 Stat., 52,) provides "that no ship or vessel of twenty tons or upwards, employed as aforesaid, shall be entitled to the allowance granted by this act, unless the skipper or master thereof shall, before he proceeds on any fishing voyage, make an agreement in writing or in print with every fisherman employed therein, according to the provisions of the act entitled 'An act for the government of persons in certain fisheries.'"

The 5th and 6th sections of the act of June, 1813, thus referred to, provide for a tonnage allowance to be made to the owners of fishing vessels, but require that the vessels shall have been employed at sea four months at least of the fishing season. The act of March 3, 1819, (3 Stat., 520,) enacts that an allowance shall be paid to fishing vessels employed in the bank and other codfisheries, for the term of three and a half months at least of the fishing season. It has been held in relation to these acts, that they include within their terms all vessels engaged in the codfisheries, without limitation or specification as to the length of their fares, or the nature of their fisheries.—(The schooner Harriet, 1 Story's C. C. R., 251.) The sums here claimed are on account of the tonnage allowance which, by the 5th section of the act of July, 1813, is the sum of four dollars for each ton over thirty, in case the vessel is actually employed at sea for four months, and the burden of each exceeded thirty tons. The act of March 3, 1819, (3 Stat., 520,) gives an allowance of three dollars and fifty cents per ton to vessels of such burden, which have been employed at sea for three and a half months. All these vessels were employed at sea for four months, with the exception of the Good Hope, which was employed at sea over three and a half months, and became entitled to an allowance of \$360, the act of March, 1819, providing that no allowance shall exceed that sum.

It is contended by the solicitor that, besides the tonnage and the names of the vessels, the names of the owner, the agreement made with the fishermen, and the year and season in which the voyages were made, it ought to be stated in the petition when—that is, between what dates—the vessels were engaged; that they were occupied exclu-

sively in taking codfish at sea ; that the master and three-fourths of the crew were citizens of the United States ; that the vessels were inspected by the proper officer of the customs, naming him ; and that he certified to the sufficiency of their outfit according to law ; that a regular log-book was kept containing the entries from day to day ; that the log-book was duly presented to the collector ; and that the owners or agents of the vessels presented also the certificates required of them.

It is sufficient to say of this position that the claim is founded upon certain laws of Congress, and those are stated in the petition. The other points to which the solicitor refers are all matters of proof ; and attached to the deposition of Joseph M. Edmonds, the deputy collector of Portsmouth, New Hampshire, are official copies of certificates signed by Nathaniel R. Folsom, the inspector, that each of the vessels was seaworthy ; that they were found in everything suitable for the cod-fisheries ; that the crew were sufficient for the tonnage ; that the master and three-fourths of the crew were citizens of the United States ; and that in all respects each vessel was fitted for the cod-fisheries, agreeably to the provisions of law, and that the agreement between the master and fishermen was duly executed by them and the owner or his agent. Edmonds deposes, that each of the vessels was examined by an officer detailed for the purpose ; that they were found to be properly fitted for codfishing, according to law and the regulations of the Treasury Department ; and that certificates were given, copies of which have been above mentioned. Annexed to his deposition, also, are the original statements of Moses Noble, agent for each of the vessels, of the time of sailing and returning from sea of each vessel, and his affidavit, proving the instrument executed by the fishermen, authenticated by the custom-house seal, and sworn to before the deputy collector at Portsmouth.

An objection was made by the collector to the payment of these bounties, because no log-book was produced before him, as required by the regulations of the Treasury Department. To show that it was competent for the department to require the production of a log-book as a condition precedent to the payment of the bounties, the United States rely on the case of *The United States vs. Bailey*, 9 Peters, 251. In that case the defendant was indicted for false swearing under the 3d section of the act of March 1, 1823, ch. 165, which provides for the punishment of any person who shall swear falsely touching the expenditure of public money, or in support of any claim against the United States. The indictment was for swearing falsely in an affidavit, in support of such a claim, under the act of July 5, 1832, for liquidating and paying certain claims of the State of Virginia. The 3d section directed the Secretary of the Treasury to adjust and settle certain claims for half-pay under that act. It is said by the court : " It is a general principle of law, in the construction of all powers of this sort, that where the end is required, the appropriate means are given. It is the duty of the Secretary to adjust and settle these claims, and in order to do so he must have authority to require suitable vouchers and evidence of the facts which are to establish the claim." Upon this ground it was held that the Secretary was au-

thorized to require an affidavit in support of the claim. It is to be observed that the act of Congress did not prescribe the character of the proof, nor upon what evidence the Secretary should adjust and settle the claim. It was consequently his duty to adopt the appropriate means, and to prescribe the necessary regulations. He might require legal evidence, by which is ordinarily understood evidence under oath. The decision therefore does not apply to a case where the proof has been already pointed by an act of Congress.

The case of the schooner *Harriet*, 1 Story C. C. R.. 252, which has been referred to, was a libel of seizure for an alleged forfeiture, charging that the owners of the vessel did, by fraud and deceit, obtain the allowance provided for vessels employed in the fisheries, contrary to the act of 1823, ch. 34. It appears from the opinion of the court, that in order to prove that the vessel was absent at sea for the period of four months, a certificate, purporting to be such a certificate as is required by the 7th section of the act of 1813, ch. 34, was produced and sworn to, and on this certificate the allowance was paid. The certificate stated the particular times of the sailing and return of the *Harriet* on her different fares, amounting in all to one hundred and thirty-one days. There was, however, an error in the calculation, apparent on the face of the paper, of ten days, so that the whole period of her absence was only one hundred and twenty-one days. The court therefore held that it was manifest that she was not entitled to the allowance on the very face of the certificate, and it was further held that it was fraudulent. To show the manner and the circumstances under which the certificate was made, a witness was introduced, and an almanac, purporting to be the almanac in which the original days of the sailing and return of the *Harriet* were marked, partly in pencil marks of R. (Return) and S., (Sailing,) and dots in ink against certain days in the almanac, as being the very days of S. (Sailing) and R. (Return.) It was held that this was not in any just sense a journal.

It is said by the court (p. 260) "the true duty of the owner and skipper of these boats and vessels is to keep an exact journal or memorandum of the actual times of being at sea, whether whole days or parts of days, and thus to enable the collector, or other officers of the customs, to ascertain with entire exactness the time passed at sea." This is undoubtedly true as a matter of convenience, particularly where numerous fares or trips are made in the course of the fishing season. But the remark is not made for the purpose of stating that keeping a journal is necessary in order to entitle the party to the bounty; but it is made for the purpose of contrasting it with the almanac offered in evidence, of which the court say: "The mere marking or mere dotting of an almanac, which might be exchanged or altered at pleasure, would be, and could be no just or sufficient proof of the verity of the marks or dots therein, as expressing the true times. If any document of this sort is to have weight as an original journal or memorandum to repel suspicion or to establish verity, it must be some document which, in its nature or character, like a log-book kept at sea, should contain original entries, made from day to day, and be beyond question a document not made up for a particular purpose afterwards upon general recollections and suggestions of the parties

in interest. What I desire to say is, that for the reasons already suggested, the almanac already produced as a memorandum of the times of the sailing and of the return of the *Harriet*, on her several voyages or fares, is not a satisfactory document to relieve the case from any otherwise well-founded suspicions of bad faith, or fraud, or deceit." Throughout the case no allusion is made to any regulation of the Treasury Department requiring the production of a log-book. Now, when an act of Congress makes it the duty of the Secretary of the Treasury to adjust and settle certain claims, and points out no mode of proving them, as in the case of the *United States vs. Bailey*, before referred to, it may well be that he is to prescribe such rules and modes of legal proof as appear to him to be judicious. But where an act of Congress provides that a sum of money shall be paid upon the production of certain proof, the Secretary cannot superadd to this further proof not required by the act. This would be to give him the power of legislation, and that, too, upon a subject upon which Congress had already legislated. If he possesses this power, so do all the other departments, and so does the judiciary; for it would be equally competent for them to say that they would not consider a claim as valid, unless evidence was produced not required by the act. The 7th section of the act of July 29, 1819, (3 Stat., 52,) enacts that before the owner of a vessel receives the allowance mentioned in the act, he shall produce to the collector a certificate mentioning the days on which the vessel sailed and returned on her different voyages, and shall make oath to its truth, and certificates in accordance with this provision are among the papers in the case. The inference is irresistible, that upon the production of the certificate the owner is entitled to the allowance; and it is equally clear, that in the opinion of the court in the case of the schooner *Harriet*, if there had been no fraud in the certificate nothing further would have been required.

Even if it should be supposed that the production of the log-books should be necessary before the party could be entitled to the allowance, it is a question whether their absence is not sufficiently accounted for. The log-books of three of the vessels, the *Sardine*, the *Good Hope*, and the *Delta*, are produced and attached to the deposition of Moses Noble. The non-production of the log-books of the remaining four vessels is accounted for by Noble as follows: "In two of said four vessels log-books were kept; in the third the master kept a log-book in an almanac; the master of the fourth vessel could not write, and kept no log-book. The claims for bounties being suspended at the Treasury Department for said alleged informalities in the shipping articles, I paid no attention to the log-books of the four vessels last named, and those which were kept have become lost, and I am unable to find them. One of said masters has moved out of the State, and the present residence of another of them is unknown to me." Now there is no reason why a log-book may not be kept in an almanac, if the times of sailing be denoted with sufficient certainty, so as not to be liable to the objections stated in the case of the schooner *Harriet*. Nor can we suppose that the misfortune of a master in being unable to write would be punished by his being deprived of the bounty given for the encouragement of the fisheries and seamen, if any reliable evidence could be procured of the times of sailing and returning from other sources.

But the absence of the log-books was not relied upon by the department, and we do not think their production was necessary for the reasons above stated. It is unnecessary, therefore, to determine whether their absence is sufficiently accounted for. The important question presented by the case is that which arises about the construction of the instrument containing the agreement with the fishermen. The claimant, after the decision of the collector in relation to the log-books, appealed to the Secretary of the Treasury, who, not considering the question as to the log-books a material one, decided that the agreement was defective.

The first section of the act of June 19, 1813, enacts that the master of any fishing vessel shall make an agreement with every fisherman, and shall, in such agreement, express whether the same is to continue for one voyage or for the fishing season, and shall also express that the fish, or the proceeds of such fishing voyage which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught. The 7th section of the act of July 29, 1819, enacts, that the owner, previous to receiving the allowance made by the act, shall produce the agreement to the collector, and also a certificate mentioning the days on which the vessel sailed and returned on the several voyages or fares she may have made. The 8th section enacts, that the vessel shall not be entitled to the allowance made by the act, unless the master shall make an agreement with each fisherman according to the act of June 19, 1813. This, it may be remarked, is the only condition precedent, in terms required by the act of Congress. This last mentioned act requires that the agreement shall express whether it "is to continue for one voyage or for the fishing season." The agreement embodied in the petition states, that the vessel is "to be employed on a fishing voyage or voyages, to commence on the ——— and to end on the ———, 184 .". This seems to be a literal compliance with the act. By this act, also, the agreement is to "express that the fish, or the proceeds of such fishing voyage or voyages which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught." The agreement produced is expressed to be "in consideration of one-half of the number of fish and oil, or proceeds of said voyage or voyages, after the shoreman's share is deducted, in proportion to the quantity or number of fish respectively caught and oil made." By this agreement the quantity, which in the words of the act "may appertain to the fishermen," is one-half the proceeds of the voyage, and the question made is whether this quantity is, by the language of the agreement, to be divided among the master and fishermen in the proportion mentioned in the act. The words "to be divided among us," or words of that import, are omitted; but the agreement is to be so construed that it shall have a meaning, if possible, and that every part shall have its effect. Unless the words referred to are understood, all that follows in relation to the "proportion" is entirely without meaning. Moreover, the agreement expressly provides that one-half the proceeds of the voyage shall belong to the fishermen in proportion to the quantity of fish respectively

caught. Now, if they were entitled to the proceeds in this proportion, of course the proceeds were to be divided among them in such proportion. We do not think that any further comment on the subject can make the matter more clear than this statement of it.

Our opinion is, that the objection, that the agreement does not show by whom the fish were to be caught, is untenable. No other inference can be made from the agreement than that the fish to be divided among the fishermen were to be the fish caught by them. It certainly did not refer to other fish caught by other persons not parties to the agreement.

It is not necessary to inquire into the question of licenses to these vessels, as the solicitor admits they were licensed, and waives any question on the point. We find the facts proved necessary to entitle the claimant to the allowances prayed for, and we report a bill for his relief accordingly.